

## Chapter 6: Procedure and Sanctions

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This chapter addresses criminal procedures and sanctions for felony traffic offenses and two-year misdemeanors involving private automobiles. Excluded from its discussion are procedures and sanctions for drunk driving and DWLS offenses under Vehicle Code §625 and §904; these subjects are addressed in Part I of this volume. Also excluded are offenses involving snowmobiles, watercraft, and ORVs; these vehicles are addressed in Volume 2 of the Traffic Benchbook. For information about traffic offenses involving minors, see Miller, *Juvenile Traffic Benchbook—Revised Edition* (MJJ, 2005), which is published as a companion volume to the *Traffic Benchbook*.

### 6.1 Felony Traffic Offenses Defined

The principal source of Michigan traffic law is the Motor Vehicle Code. The Vehicle Code clearly distinguishes the felony traffic offense from the misdemeanor and civil infraction:

“It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of this state declared to be a felony or a civil infraction.” MCL 257.901(1).

In other words, all felony traffic offenses are declared by statute to be so.

Other felony traffic offenses appear in the Michigan Penal Code. The Penal Code construes “felony” to mean an offense punishable by death or by imprisonment in the state prison. MCL 750.7.

The Code of Criminal Procedure defines “felony” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.” MCL 761.1(g).

According to the foregoing definitions, those crimes designated as felonies are more serious in nature than those designated as misdemeanors. Both felonies and misdemeanors should be distinguished from civil infractions, which are not crimes. Because it is not a crime, a civil infraction cannot be a lesser-included offense of a felony or misdemeanor.\* MCL 257.907(1).

\*See Volume 1 of the *Traffic Benchbook* on civil infractions.

## 6.2 Courts' Jurisdiction Over Felony Traffic Offenses

\*See Miller, *Juvenile Traffic Benchbook—Revised Edition* (MJJ, 2005) for a detailed discussion of the required procedures for juveniles.

The district court has jurisdiction to conduct felony arraignments and preliminary examinations. MCL 600.8311(c)-(d); MCR 6.104 and 6.110. The circuit court has jurisdiction to try felony offenses. Const 1963, art 6, §13 and MCL 762.1. The Family Division of Circuit Court has jurisdiction over criminal cases involving juveniles.\*

For a general discussion of pretrial proceedings in criminal cases, see the Criminal Procedure Monograph Series, Monographs 1, 2, 4, 5, and 6. For general information about magistrates' duties in traffic cases, see *New Magistrate Traffic Adjudication Manual* (MJJ, 2003).

## 6.3 Criminal Penalties for Felony Traffic Offenses

The Motor Vehicle and Penal Codes contain general penalty provisions that apply in felony cases where criminal sanctions are not otherwise fixed by statute. Under the Motor Vehicle Code, “[a]ny person who is convicted of a violation of any of the provisions of this act declared to constitute a felony, unless a different penalty is expressly provided herein, shall be punished by imprisonment for not less than 1 year nor more than 5 years, or by a fine of not less than \$500.00 nor more than \$5,000.00, or by both such fine and imprisonment.” MCL 257.902.

Under the Michigan Penal Code, if the criminal penalty is not otherwise fixed by statute, a person convicted of a crime declared by the state of Michigan to be a felony “is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than 5,000.00 dollars, or both.” MCL 750.503.\*

A conflict between the penal provisions of the Vehicle Code and the Code of Criminal Procedure must be resolved in favor of the more specific Vehicle Code provisions. See *Wayne County Prosecutor v Wayne Circuit Judge*, 154 Mich App 216, 221–22 (1986), discussed at Section 2.9(A) of this volume.

Effective October 1, 2003, if a court orders a defendant to pay any combination of fines, costs, or assessments, the court shall order the defendant to pay state minimum costs of not less than \$60.00 for felony convictions. MCL 769.1j(1)(a). Payment of the state minimum costs must be made part of a defendant's probation. MCL 771.3(1)(g); MCL 769.1j(3).

## 6.4 Licensing Sanctions for Felony Traffic Offenses

Prior to October 1, 1999, courts and the Secretary of State had statutory authority to order licensing sanctions for certain felony offenses. For arrests after October 1, 1999, the authority to impose licensing sanctions has been consolidated in the Secretary of State in all cases, except for:

\*2002 PA 722 amended MCL 750.503 by modifying the maximum authorized fine from \$2,000.00 to \$5,000.00, effective March 31, 2003.

- Drug suspensions under the Public Health Code, MCL 333.7408a; or
- No proof of insurance convictions. MCL 257.328.

This section generally addresses the Secretary of State's authority to impose points, license suspensions, and license revocations in felony cases.\* For information about licensing sanctions imposed for a particular offense, see the discussion of that offense in Chapters 7 - 9 of this volume. For information about abstract of conviction requirements, see Section 2.12 of this volume.

**Note:** If the defendant was convicted of an attempt to commit a felony traffic offense, the same licensing sanctions apply as if the defendant had been convicted of the completed offense. Effective October 1, 1999, MCL 257.204b(1), provides:

“When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.”

See Section 7.1 of this volume for more discussion of attempted traffic offenses.

## A. Points

After a felony conviction is entered on a defendant's master driving record, the Secretary of State may assess points according to the schedule set forth in MCL 257.320a. Assessing points is a mandatory function of the Secretary of State, not a function of the court.

Felony convictions for moving violations result in the assessment of six points on the defendant's driving record. Vehicle Code §320a lists the following assessments of points in felony cases:\*

- Six points—Manslaughter, negligent homicide, or a felony resulting from the operation of a motor vehicle. MCL 257.320a(1)(a).
- Six points—Causing death to a person working in a work zone in violation of MCL 257.601b(3). MCL 257.320a(1)(b).
- Six points—Committing a criminal moving violation that causes death to a person operating an implement of husbandry in violation of MCL 257.601c(2). MCL 257.320a(1)(b).

\*License suspensions and revocations in drunk driving and DWLS cases under Vehicle Code §625 and §904 are discussed in Section 2.10 of this volume.

\*This list does not include the drunk driving offenses in Chapter 3 of this volume. See the discussion of each offense for information about the points assessed.

- Six points—Causing injury to emergency response personnel in the immediate area of a stationary authorized emergency vehicle in violation of MCL 257.653a(3). MCL 257.320a(1)(b).
- Six points—Causing death to emergency response personnel in the immediate area of a stationary authorized emergency vehicle in violation of MCL 257.653a(4). MCL 257.320a(1)(b).
- Six points—Failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.320a(1)(d).
- Six points—Felony driving. MCL 257.320a(1)(e).
- Six points—Fleeing and eluding. MCL 257.320a(1)(f).

If more than one conviction, civil infraction determination, or juvenile disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points. MCL 257.320a(5).

## **B. Driver Responsibility Fee**

The Secretary of State imposes a driver responsibility fee based on the number of points an individual accumulates on his or her driving record. MCL 257.732a. MCL 257.732a(1) states:

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

MCL 257.732a(2) specifies higher driver’s responsibility fees for certain offenses. Those fees are discussed in conjunction with the offenses to which they apply.

MCL 257.732a(7) states:

“A driver responsibility fee shall be assessed under this section in the same manner for a conviction . . . for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

Only points assigned after the original effective date of the statute (October 1, 2003) will be used to calculate the driver responsibility fee. Points existing on a driver's record prior to that date do not count. MCL 257.732a(6).

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3),(5).

### C. License Suspension

Persons convicted of certain felony or two-year misdemeanor traffic offenses receive a mandatory license suspension under MCL 257.319. Such a suspension is imposed notwithstanding a court order unless the court order complies with MCL 257.323. MCL 257.319(12). The periods of suspension set forth in §319 appear below.

**MCL 257.319(2)** requires a one-year suspension of the defendant's driver's license for the following felonies:

- Altering or forging documents pertaining to motor vehicles in violation of MCL 257.257.
- Unlawfully driving away an automobile. MCL 750.413.
- Felonious driving. MCL 257.626c.
- A "felony in which a motor vehicle was used." 257.319(2)(d).\*
- Third- and fourth-degree fleeing and eluding. MCL 257.602a(2) or (3) and MCL 750.479a(2) or (3).

\*See Section 6.4(E), below, for more information about felonies in which a motor vehicle was used.

**MCL 257.319(3)** requires the Secretary of State to suspend the defendant's driver's license for 90 days for the following felonies:

- Malicious destruction of trees, shrubs, plants, or soil with a motor vehicle. MCL 750.382(1)(c) or (d).
- Causing injury to emergency response personnel in the immediate area of a stationary authorized emergency vehicle. MCL 257.653a(3).

**MCL 257.319(5)–(6)** require the Secretary of State to suspend the defendant's driver's license as follows for making a false certification, MCL 257.903, or unlawfully using an automobile without intent to steal, MCL 750.414:

- For a first offense, 90 days.
- If the defendant has one or more prior convictions for the same offense within seven years, one year.

If the Secretary of State receives records of more than one conviction of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies. MCL 257.319(13).

## D. License Revocation

MCL 257.303(5) requires the Secretary of State to revoke the defendant's driver's license in certain circumstances. With regard to felony offenses, the Secretary of State must revoke the defendant's driver's license in the following circumstances:

- Any combination of two or more convictions within seven years for any of the following:
  - (i) "A felony in which a motor vehicle was used." MCL 257.303(5)(b)(i). See Section 6.4(E), below, for more information about this type of offense.
  - (ii) Causing injury or death to a work zone worker in violation of MCL 257.601b(2) or (3). MCL 257.303(5)(b)(ii).
  - (iii) Committing a criminal moving violation that causes death to a person operating an implement of husbandry in violation of MCL 257.601c(2). MCL 257.303(5)(b)(ii).
  - (iv) First- and second-degree fleeing and eluding, MCL 257.602a(4) or (5) and MCL 750.479a(4) or (5). MCL 257.303(5)(b)(ii) or (iv).
  - (v) Leaving the scene of an accident involving serious injury or death in violation of MCL 257.617. MCL 257.303(5)(b)(ii).
  - (vi) Driving with a suspended or revoked license causing death or serious impairment of body function, MCL 257.904(4) or (5). MCL 257.303(5)(b)(ii).
  - (vii) Causing injury or death to an emergency response person in the immediate area of a stationary authorized emergency vehicle in violation of MCL 257.653a(3) or (4). MCL 257.303(5)(b)(ii).
  - (viii) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes. MCL 257.303(5)(b)(iii).

- One conviction for:
  - (i) Causing death to a work zone worker in violation of MCL 257.601b(3). MCL 257.303(5)(d).
  - (ii) First- and second-degree fleeing and eluding, MCL 257.602a(4) or (5) and MCL 257.479a(4) or (5). MCL 257.303(5)(d) or (f).
  - (iii) Committing a criminal moving violation that causes death to a person operating an implement of husbandry in violation of MCL 257.601c(2). MCL 257.303(5)(d).
  - (iv) Leaving the scene of an accident involving serious injury or death in violation of MCL 257.617. MCL 257.303(5)(d).
  - (v) Causing death to emergency response personnel in the immediate area of a stationary authorized emergency vehicle in violation of MCL 257.653a(4). MCL 257.303(5)(d).
  - (vi) Driving with a suspended or revoked license causing death or serious impairment of body function, MCL 257.904(4) or (5). MCL 257.303(5)(d).
  - (vii) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes. MCL 257.303(5)(e).

The Secretary of State shall revoke a license in the foregoing cases notwithstanding a court order unless the court order complies with MCL 257.323. MCL 257.303(6).

For persons whose licenses were revoked following a single conviction, periods of license revocation imposed under MCL 257.303(5)(d)-(f) expire on the later of the following:

- The expiration of not less than one year after the license was revoked or denied.
- The expiration of not less than five years after the date of a subsequent revocation or denial occurring within seven years after the date of any prior revocation or denial.

MCL 257.303(7)(a)(i)-(ii).

For repeat offenders, periods of license revocation imposed under MCL 257.303(5)(a)-(b) expire when “the person rebuts by clear and convincing

evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender.” MCL 257.303(7)(b).

Multiple convictions resulting from the same incident are treated as a single violation for purposes of revocation. MCL 257.303(8).

### **E. Licensing Sanctions for a “Felony in Which a Motor Vehicle Was Used”**

\*Criminal penalties in these cases are to be imposed according to the penal statute that applies to the felony at issue.

The Vehicle Code mandates specific licensing sanctions for offenses categorized as a “felony in which a motor vehicle was used.” Felonies so categorized are not separate offenses that are subject to additional criminal penalties.\* Instead, this characterization is a judicial determination made after conviction as part of the sentence that results in the imposition of the following licensing sanctions:

- Suspension of the defendant’s driver’s license for one year for a first offense. MCL 257.319(2)(d).
- Revocation of the defendant’s driver’s license upon conviction within seven years of two “felonies in which a motor vehicle was used,” or a combination of one “felony in which a motor vehicle was used” and a conviction of one of several offenses listed in Section 6.4(D), above. MCL 257.303(5)(b).

Before these sanctions may be imposed, three procedural requirements must be met:

1. The prosecutor must give the defendant notice on the complaint and information that license suspension may result upon conviction. This notice must state:

“You are charged with the commission of a felony in which a motor vehicle was used. If you are convicted and the judge finds that the conviction is for a felony in which a motor vehicle was used, as defined in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319, your driver’s license shall be suspended by the Secretary of State.” MCL 257.732(7).

2. The court must determine as part of the sentence that the felony was one in which a motor vehicle was used. A felony in which a motor vehicle was used is:

“a felony during the commission of which the person operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed:



“(a) The vehicle was used as an instrument of the felony.

“(b) The vehicle was used to transport a victim of the felony.

“(c) The vehicle was used to flee the scene of a felony.

“(d) The vehicle was necessary for the commission of the felony.” MCL 257.732(6). (MCL 257.319(2)(d) and MCL 257.303(9) contain a substantially similar definitions.)

3. Upon conviction, the court must send an abstract to the Secretary of State. MCL 257.732(9).

Despite the broad definition of a “felony in which a motor vehicle was used,” some felonies involving motor vehicles are exempt from the notice requirements imposed by Vehicle Code §732(7). These exempt felonies are listed in §732(4) and §319; many of them are also subject to different licensing sanctions than those generally imposed on “felonies in which a motor vehicle was used.” These exempt felonies are as follows:

- Fraudulently altering or forging documents pertinent to a motor vehicle. MCL 257.257.
- Unlawful driving away an automobile, MCL 750.413, or an attempt to commit this offense.
- Use of a motor vehicle without authority but without intent to steal, MCL 750.414, or an attempt to commit this offense.
- Failure to obey a police or conservation officer’s direction to stop, MCL 750.479a(2) or (3), and MCL 257.602a(2) or (3), or an attempt to commit this offense.
- Felonious driving, MCL 257.626c, or an attempt to commit this offense.
- Causing injury to a work zone worker, MCL 257.601(b)(2), or an attempt to commit this offense.
- Causing injury to emergency response personnel in the immediate area of a stationary authorized emergency vehicle, MCL 257.653a(3), or an attempt to commit this offense.
- Negligent homicide with a motor vehicle, MCL 750.324, or an attempt to commit this offense.
- Manslaughter with a motor vehicle, MCL 750.321, or an attempt to commit this offense.

- Murder with a motor vehicle, MCL 750.316 (first-degree murder), and MCL 750.317 (second-degree murder), or an attempt to commit these offenses.
- Perjury or false certification to Secretary of State. MCL 257.903.
- Malicious destruction of trees, grass, shrubs, etc., with a motor vehicle. MCL 750.382(1)(c) or (d).
- Failing to stop and disclose identity at the scene of an accident resulting in death or serious injury. MCL 257.617 and MCL 257.617a.
- Drunk driving offenses under MCL 257.625.
- A controlled substance violation under MCL 333.7401– MCL 333.7461, or 333.17766a, for which the defendant receives a minimum prison sentence of less than one year.